pageI

Of DEC 27 PM 4: 04

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Ortiz, Solice officer with the Commonwealth of Pierto Rico, assigned to the flightive took force, with the federal Bureau of Investigation of San Juan.

Officer Ortiz states on page 28-Question 10 thru 23, how he and great Knocked on Luz M. redillar door, identified themselves, restrained ms. Padilla, The agents then entered the residence to do a protective Sweep for the Security of the agents.

At no time did Officer Ortiz state that after identifing themselves as agents did they tell his. Padilla that she was under arrest, or they had a warrant for her. At no time did officer Ortiz mention that Ms. Padillar miranda rights were read to here in English or Spanish.

Page 33 Line 1 thruld - Officer was questioned about Exhibit One, where he Signed his Signature, but he did not write down the time. Why not? Isn't it proper procedure. Time is of the essence.

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On page 38 Officer Ortiz Claims he did not know the address before he got to his Padillair house. Why not?

Officer Ortiz does not remember when ms radilla was tellen away. He did not know if any officers left the premises before she was taken away. Pg. 38 L-20-25 Pg 39 L. 1.

Pg 39 L.17-When Officer Ortiz was asked Do you know if she (Ms. Padilla), was given her Miranda rights? - Line 18, Officer Ortiz answered, I don't recall that, no. I don't recall that.

Pg 40 L 18-Officer Ortiz was asked, why did you not at the time so and secure a Search warrant?

Hy did you not Secure a Search warrant after the protective Sweep had been performed while she was already outside and in your custody and outside of the apartment?

The Court states! That answers the protective Sweep, but why didn't you go and set a Search warrant? Officer Ortiz has no answer. pase 3

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Pase 42 Line-The Court is asking again, Why did you not go set a search warrant.

It is obvious that Officer Ortiz Could not answer the questions asked him because he was afraid to. I'm sure Officer Ortiz was not accustomed to being part of serving a search warrant in the manner he witnessed at Ms. Padillaic house.

Officer Ortiz was smort enough not to perjure himself on a witness stand, under ooth in a court of law.

Officer Ortiz did not even know where he was going when the F.B.I. Agents picked him up to go and serve a warrant on Mr. Padilla. He Couldn't even remember the time, everything happened so fast.

There was no knock at the door at Ms. Fadillar residence. These Agents busted" through the Front and back doors of her residence, with Shotguns aimed in her face and then through her to the floor, while her daughter screamed in horror.

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Officer Ortiz could not answer when asked how many police officers or Agents there were. He could not answer when asked what Mrs. Fadilla was wearing.

There was no search warrant or Consent to search by Ms. radilla. I doubt she even had the time to think or blink with Agents busting through her house with guns drawn and pointed at her face, frightened for her daughter.

The Court was wrong trying to convince officer Ortiz into saying ms. Padilla tricked him that he could Search the house, then Saying She didn't give consent. Pg. 42 L14-25-Pg. 43 L-1.

Agent Sandra Islaine almost perjuried herself on the witness stand, but she cause the LI-25-Page 47 Line I-22. Agent Islaine clearly states she was outside and dosent know what rappened, because she wasn't there. Agent Islaine does not recall dealing with a little girl. She dosen't remember anything eithers. Page 48-26, I don't recall.

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his sodilla should not have been convicted on the information provided by the arresting agents that could not remember anything.

hrs. Padilla Should not have been connicted on the information of the arresting agents who did not Show up in court. This Padilla has the right to be confronted by the witnesser against her, also to cross-examine these witnesses. This violates the loth Amendment Confrontation Clause:

For the Government to Imply that Ms.

Podilla received information through a so-called toilet telephone in the jail while incarcerated is utterly vidicious. The authorities claim that Ms. Fodilla was tipped-off; to the Agents coming to her house, so She had an opportunity to get rid of evidence. This information is based on hearsay evidence and is inadmissable in a court of law as is the rest of the hearsay evidence against Ms rodilla and any evidence obtained through an illegal Search and Seizure.

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to the Fifth Amendment right to due process of law, to the Sixth Amendment right to Jury trial, to 28 U.S.C. 2255, to U.S. v. Green 2004, U.S. Dist LEXIS 11292 D. Ma.OH), and to Blakely v. Washington 542 U.S.—124 S.CT. 2531 (04), Pet. for rehing denied, 2004 U.S. LEXIS 4887 (04) and its progeny, that the Court vacate her sentence and impose a Just and reasonable sentence.

Tune 24, 2004 the Supreme Court decided Bately.

Mrs. Fadilla did not Appeal or contest sentence Guidelines to her case. To prevail under 2255 the must now demonstrate cause and presidice Massaro v. U.S. 538 L.S. 500, 504, 123 S. CT. 1690, 1693, (2003); Sustache - Privera v. U.S. 221 F. 3d. 8, 17 1st Cir. (2000). Cert denied 532 L.S. 924 (2001) Kenny v. U.S. (2002) DNH. 99, (2002) L.S. Dist. LEXIS 9091 (2002) (unpublished opinion). Her case meets that standard.

Apprend; v New Jersey, 530 U.S. 466, 120 S.CT. 2348, (2000), was denied three and a-half years before sentencing. It held that pursuant to the Sixth Amendment any fact other than a

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prior conviction which increases the penality for a crime beyond the prescribed statutory maximum must be submitted to a Jury and proved beyond a reasonable doubt. Prior to June 24, 2004 when Blakely was decided, the first Circuit Court of Appeals and all the other courts of Appeals and all the other courts of Appeals and that Apprendidity not apply to Federal Sentencing Guidelines.

Blakely, 124 S.CT. at 2847 n. 1 (Justice)
Connor dissenting, citting cases) prior to
June 24, 2004, so long as the sentence did
not exceed the offense statutory maximum
drug quality was treated as a sentencing
Ector determined by the Judge based upon
the preponderance of the evidence, not as
an element of the offense to be found by
a Jury beyond a reasonable doubt. U.S. v.
Goodine, 326 F. 3d. 26, 32-36 (1st Cir 2003), cert.
denied 124 S.CT. 1600 (2004); U.S. v. Glaum, 356
F. 3d. 169, 178, (1st Cir. 2004).

When this court sentenced Luz Padilla, there appeared to be no viable Challenge to the Constitutionality of the Sentencing Gudelines CF. Campbell v. U. S. (2004) L. S. App. LEXIS 18037 *7-9 (1st Cir. 8-25-04) Linguishished)

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Cert of appeal ability denied; counsels failure to anticipate Blakely -based Sentencing arguments not unreasonable performance under Strickland; well established First Circuit precedent contravened Such arguments.

L. S. v. Morgan, (2004) U. S. App. LEXIS 18734, LY (1st Cir. 9-2-04) (unpublished) (Cir. precedent foreclosed appellate review of Sentenced-based on Blakley arguments which were neither raised in District Court nor briefed.

The dearth of Chithority to support a Constitutional attack on the Federal Sentencing Guidelines prior to June 24, or constituted ause for Ms. Padilla's failure to do so at her sentencing.

Since the Sentencing and List sentence without regard to the quidelines.

Six days before the Blately decision, Chief Idre William Young Issued a wide ranging, well-Supported Sentencing memorandum which considered Constitutional Issues not raised by the Defendants at their sentencing and which concluded that page 4 28 U.S. C. 2255 Motion 2004

the U.S.S.G. are unconstitutional, U.S. v. Green, (2004) U.S. Dist LEXIS 11292 (D-Mass 6-18-2004). Neither the Supreme Court nor the First Circuit Court of Appeals has yet to address the constitutional analyses in Green. This court can and Should do so.

Green anticipates Blakely in extending Apprendi and Ring v. Arrizona, 536 U.S. 122 S.CT., 2428 (2002), to guideline Sentencing. It also anticipates the courts of Appeal decisions extending Blakely to the Federal Guidelines, requiring that any sentence enhancing fact be proven to a sury beyond a reasonable doubt or admitted by the defendant. Furthermore, Green goes beyond those cases to demonstrate that the Combined efforts of various changes to the Federal Sentencing process since Mistretta v. U. S., 488 U.S. 361, 109 S. CT. 647 (1989); particularly the Feeney Amendment abridge rederal Defendants due process rights to a Pair trial before a sury of their preers and to the Government bearing the burden of proof beyond a reasonable doubt, and violate the constitutional principle of separation of powers by aggrand-Izing the Executive and Legislative Branches at the expense of the Judicial branch.

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It least one District Court has held that Feeney's Judicial reporting requirement unconstitutionally stifles Judicial independence contrary to Article III of the U.S. Constitution. U.S. v. Mendoza, (2004) U.S. Dist. LEXIS 1449 Gen. D. California (1-12-04). For the reason stated in Green and mendoza, the Federal Guidelines Scheme which governed Ms. Podillair sentencing, violated those Fifth and Sixth Amendment Mights.

Little it's clavification of a defendant's Sixth Amendment rights, the islately court worked a sea change in the body of Sentencing Law? U.S. v. Ameline, 376 F.3d. 967, (2004) U.S. App. LEXIS, 15031, 12* (9th Cir. 2004) (citing cases).

This court should follow the cogent reasoning in the cases which conclude that Blakely extends Apprendi to the Sentencing Quidelines.

In Blakely the Supreme Court said: Our precedents make clear that the Statutory maximum for Apprendi purposes is the maximum sentence a sudge may impose solely on the facts reflected in the sury verdict or admitted by the Defendant. In other words, the relevant statutory maximum is not the maximum

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Sentence a stage may impose after finding additional foots, but the maximum he may impose without any additional findings.

pagelo

This. Pedilla did not knowingly and intelligently relinquish or abandon the constitutional rights manifested in Green, islately and later cases, She may properly assert those rights before this Court. U.S. v. Abbott, 241 F. 3d. 29, 33-34, (1st Cir 2001).

The sounder conclusion is that they were designed as an integrated regime, that they therefore cannot be severed into constitutional or unconstitutional parts while still remaining true to the legislative purpose, and they are wholly unconstitutional.

D-Litat, June 29, 2004) holding the Guidelines Wholly unconstitutional and using the Guidelines as advisory but not necessarily bindings; U.S. v. Mueffleman (2004) L.S. Dist. LEXIS 14114 at 42-45 D-ma July 26, 2004) (89me). Such was the view of two of the 3 Jdges panel in U.S. v. Mooney, (2004) U.S. App. LEXIS 1530 1st at 43 Whose opinions has been vacated for en banc review (04) U.S. App. LEXIS 16302

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Solem v. Helm, 463 U.S. 277, 103 S.CT. 3001, 77 L.Ed 2d 637 1983. The Supreme Court held that the Eighth Amendment requires a prison sentence to be proportionate to the Crime for which the defendant has been Convicted Id. at 289-90, 103 S.CT. at 3009-10.

Although cautioning that no prison sentence is per se constitutional, the Court advised reviewing courts to grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishment for crimes, as well as to the discretion that trial courts possess in Sentencing Convicted Criminals." Id at 290, 103 S.CT. at 3009 (quoting Rummel v. Estelle, 455 U.S. 263, 272, 100 S.CT. 1133, 1138, 63 L.Ed 2d 382 (1980).

Jespect Pally, July, Indilla 11-24-04 Force 7 28 U.S.C. 2255 Motion 2004

United States District Idge Presnell Concluded

The Suggestion that courts use the Guidelines in some cases but not others at best schizophrenic and at worst contrary to basic principles of Justice, practicality, Pairness, due process, and equal protection. Courts simply cannot apply a determinate Sentencing code to one defendant, whose Sentence raises no Judicial feat finding enhancement issues and a separate distortionary scheme to another defendant whose sentence does raise enhancement issues.

Respect fully,

The District Court Improperly delegated its sentencing authority by allowing the probation officer to determine the number of drug tests that ms. radilla must undergo during Supervision. OPerieu for abuse of discretion-United States v. Phaneuf, 91 F.3d. 255, 262 (1st Cir 1996); United States v. Tepe 80 F. 3d 19, 22 (1st Cir 1996) One drug test within 15 days of release on Supervision and there after as required by the probation officer. The Sentencing Court erred by delegating to the Probation Officer additional drug testing to be ordered during Supervised release. The Court Should have imposed a limit on the number of drug tests probation can direct. This is a delegation infirmity which constitutes error. This case Should be remanded for re-sentencing. The District Court impermissibly delegated its authority to the Probation officer by delegating the number of drug tests that Ms. radilla, must underso

While on Supervised release.

Defendant: LUZ MARIA PAL _LA
Case Number: CRIM, 97-74-03 (DRD)

-udgment-Page 3 of 4

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance, firearms, destructive device or other dangerous weapons.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and any other periodic drug tests thereafter, whenever so requested by the probation officer. If any such samples detect substance abuse, the defendant shall participate in a substance abuse treatment program, arranged and approved by the U. S. Probation Officer, until duly discharged by authorized program personnel with the approval of the U. S. Probation Officer.

- [] The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- [x] The defendant shall not unlawfully possess controlled substances, and shall refrain from possessing firearms, as defined in 18 U.S.C. Section 921, or other dangerous weapons. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of the is judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 5) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

 the defendant shall not associate with any persons angaged in criminal activity, and shall not associate with any person
- the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer:
- the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without
- as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245 S (Rev. 4/90) Sheet 3 - Supervised Release

Searches, Serzures, and Privacy Rights

A. The Fourth Almendment:

The Fourth Amendment to the United States Constitution provides in part that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. The language of the amendment raises two questions: (1) when has a search or seizure occurred, triggering the protections of the Fourth Amendment, and (2) when is a search or seizure prohibitively unreasonable?

Nowhere in the Constitution is a right of privacy Specifically Set forth. But privacy interests are Clearly protected and promoted by the Fourth Amendment, which restricts governmental intrusions into our homes, Seizures of our property, and Searches and Seizures of our bodies.

Amendment 4-3490:

If search of a house is to be upheld as incident to arrest, arrest must take place inside house, not somewhere outside—whether two blocks away, twenty feet away or on Sidewalk near front Steps. Vale v. Louisiana, La. 1970, 90 S.CT. 1969, 399 U.S. 30, 26 L.Ed. 2d 409.

One's house cannot be lawfully searched without search warrant except as an incident to a lawful arrest therein.

Shipley v. California, Cal. 1969, 89 S.CT. 2053.

395 U.S. 818, 23 L. Ed. 2d 732.

In order to be stistified in conducting a warrantless search of a residence after making an arrest inside the residence, the Government must be able to point to specific and articulable facts which, taken together with rational inferences from the facts, houd reasonably warrant the intrusion. U.S. v. Gardner, CA. Cal. 1980, 627 Fad 906.

Belief, however well founded, that articles are concealed inside of dwelling house, does not Instify a search of dwelling incident to an arrest, the arrest must be made inside the house. U.S. v. Jackson, C.A. Ohio 1976, 523 F. 2d.

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Fourth Amendent

Constitutionally of its intrusion against an individual's claim of a violation of a reasonable expectation of privacy, government must demonstrate that place where intrusion occurred is one where individual did not have a Justified expectation of privacy, intrusion, was not aided by mechanical or cleatronic means, and investigating officer was situated where an individual should anticipate that another person might have a right to be. U. S. C. A. Const. Amend. 4.

The Fourth Amendment to the United States Constitution protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and Seizures."

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Onferred, as against the government, the right to be let alone the most comprehensive of rights and the right most valued by Civilized man. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use as evidence in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth Amendment.

The Fourth Amendment ensures and protects the Freedom from unreasonable searches and seizures is a substantive protection available to all inhabitants of the United States, whether or not charged with a crime.

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Superseding Indictment - Criminal No. 97-74 DRD) Pase 5-6

<u>leciders!</u>

1) Jesus R. Perez-Cruz Ata-"Indio" was one of the leaders and organizers of the drugtrafficking organization described in Counts One and Two. He did lead, organize, control, vertorce through the use of violence and appervise the sales of controlled substances at drug points located at the Manuel A. Revez Public Housing Project, Rio Piedras, Presto Rico. He did direct and Supervise numerous subordirectes.

(A) to supply sellers with the drugs to be sold and collect the proceeds derived from their Sale at drug points, to package drugs, to provide Protection to sell rarcotics and personally deliver drugs to sellers and runners. No where is Luz radillais rame mentioned as a leader or organizer. This person, Jesus R. Derez alka Indio was in charge.

one of the leaders and organizers of the drug-trafficking organization described in Counts one and thuo. He did bead, organize, control, enforce through use of violence, and Supervise the Sale of Controlled Substances at drug

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points located at the Manuel A. Perez Public Holsing prosect, Rio Piedras, Puerto Rico. He did direct and supervise numerous subordinates whose principle tasks were to suppy, Sell, Collect proceeds, and package drugs for sale. To provide protection. No where is Luz Padilla's name mentioned as a leader or an organizer. This person reynaldomay sonet Marvaez aka Chacko was in Charge.

3) b. Luz Maria Padilla ata Luzma was one of the runners. She received pactiged rarcotics from Desus-IP. Derez-Cruz ata Indio and Degraldo Maysonet-Marvaez ata Chacho' and deliver them and collect proceeds. She was not a leader or a organizer or a superviser.

The Padilla did not possess, branish, or use firearms as defined in 17the 18, United States Code, Section 921(a)(3). She did not use guns to provide protection for the drug operations.

Luz Padilla did not cide and abet in car-Jacking numerous vehicles to shoot at rivaldrug-trafficking Organizations. Juz Fedilla did not aide 4 abet in storing or hide from view controlled substances or firearms as defined in Title 18, United States and Section BI(D(3).

Luz Fodilla had no involvement whatso ever inwhat the leaders and organizers did to conduct their illegal business ventores including violence and murder. She was simply a runner.

Rusant to USSG. 3BII(c) was errorously

Revolunt to USSG. 3B1.1(c) was erronausly applied to Mis Bedilla requiring a (2) level upward addustment for being a supervisor of Some Kind in the offense. There is no proof that Mis Fadilla was a supervisor of any Kind, Just a runner. Its just hearsay evidence.

The evidence in this case was not strong enough to support a conspiracy charge that would let such heavisay be admitted, instead a preconceived sudgement was formed without a factual basis, which was domaging to Ms. Podilla's legal rights which subjected her to undue presidice.

Page 1	28 U.S.C. 2255 Motion 2004
PISSE	United States District Court- Suppression Hearing
	March 30, 1998-Honorable Daniel 13. Dominguez
	Hoto Rex, Puerto Rico-CR-97-74 (DRD)
	Mr. Rivera-paga-Line 11- Motion to Suppress-
	The Court-page 2 Line-13- It is.
	Court - page 2 Line - 21 - Lets get the facts.
	Court pages-Line-1- may I est a question?
	Mr. Rivera - page 3 - Line 2 - Yes
	Court-page3-Line-3-I notice the United States may have several witnesses. Thr. Pereira-page3-Line-5-Their not here.
	Mr. Pereira-page3-line 5-Their not here.
	Court-pages-Line-6-They're not your witnesses?
	Mr. Pereira pages-line 7. They are agents for the
	United States in charge of this investigation, but witnesses I do not have present.

pages

226.2.2.2 86

Arrest April 11, 1997 - Police Knocked

Line 22-page: 3. I opened the door and a firearm was part in my face. The officers told me they had a warrant, but did not know why.

Rige 3- Line-11. While I was being hand-cutted, police walked into my house and opened back-door, to let in other officers (194-1-12).

Pages-Line-13-Police were searching house and to-line-17 one officer was telling me to sigh authorization for them to search my house, I said no, because the police were already searching throughout my house.

Tage-8-Line 2-18-I would not sign consent to Search, I know my rights.

The police were trying to intimidate Mrs. Fodilla with a show of force, by the presence of numerous officers with Guns drawn. The illegally searched the premises while Mrs. Fodilla was outside of the house. Police were already searching the house, while trying to get her to Sign Consent form.

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page 10-2-11- Mrs. Padilla did you at any point consent to being searched, for your premises to be searched, on the morning of April 11, 1997?

Page 10-L-14-no- Ms radilla was outside of the impartment-rage 36-L-11-Ortiz page 12-L-21- Mr. rereira-Her testimony was that they had long weapons and she

was untamiliar with weapons. That was the direct examination of this

withess.

page 12-1-17- You're also familiar with weapons, are
You not? You know what an AK-47
is and you know what a Shotgun
is and you know the different types
of weapons ere?

Mr. Rivera: Objection, Your Honor. Page 121-20

page 4	28 U.S	. C. 2255	nottan	Y00-6
			he opened the z redilla was gain. F.B.I., w warrant and she was outside	
Rivera-OP	age 35 line	17- She cam	ne out of the	grantment?
			e out of the c	
TA-SitVC	age35 Line	Come out a	e her instruction of the aparts ed with the infinien.	iment and
Rivera-QP W	age36 Line onile you wer is. Podilla ne	?- Now, your re searching ever told you	also indicated the entire of to stop or an	that partment y thing?
		-	as outside of the	

If search of a house is to be upheld as incident to arrest, arrest must take place inside the house, not somewhere outside.

Mrs. Podilla, was outside of the apartment while she was arrested and the house was searched.